CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – II

Service Tax Appeal No.328 of 2012

[Arising out of Order-in-Appeal/ Original No.68/2011-ST dated 25.11.2011 passed by the Commissioner, Central Excise, Jaipur]

M/s. Cosmos Collection **...Appellant**
20, Laxmi Colony,
Opp. Laxmi Cinema, Tonk Road, Jaipur

VERSUS

Commissioner of Central Excise, Jaipur **...Respondent**
Central Excise Commissionerate-I, Jaipur

APPEARANCE:

Mr.Bipin Garg, Advocate for the Appellant
Mr.R.K. Maji, Authorised Representative for the Respondent

Coram: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 19.07.2019
DATE OF DECISION : 13.11.2019

FINAL ORDER No. 51471/2019

ANIL CHOUDHARY:

The appellant Cosmos Collection were engaged in the trading of various items of furniture etc. including hardware items. They were registered with the Sales Tax Department at Jaipur. Subsequently, they started to undertake interior décor work from the Financial Year 2006-07. Under the terms of contract such work included both supply of labour as well as supply of materials. Service Tax Registration was obtained under the head 'Commercial and Industrial Construction Service', as defined in Section 65 (25) (b) of the Finance Act. The appellant was separately showing in their bills for the interior work being done by them, the value of materials and the value of labour involved, and accordingly they charged Sales Tax on the material component and service tax on the labour component. Appellant also continued their business of trading wherein the sales invoices they charged VAT/Sales-Tax. Appellant was filing return both under the provisions of VAT and also under the provisions of service tax.

2. There was an audit by the Service Tax Department in the premises of the appellant in June, 2008 and thereafter audit objection was raised dated 23rd September, 2008.

3. It appeared to Revenue that appellant have wrongly availed benefit of Notification No. 1/2006-ST (Abatement) and that they have undervalued the gross value of service. Revenue was of the view that appellant should pay service tax on the gross value (including the material components). It further appeared that for the period 1st October, 2004 to 15th June, 2005, appellant is liable to pay service tax on the entire gross receipt, classifiable as 'construction service' and for the period 16.06.2005 to 31.03.2009 on the gross value under the head 'Commercial and Industrial Construction of Complex Service'. Accordingly, SCN dated 21st April, 2010 was issued for the disputed period 1st October, 2004 to 31st March, 2009, invoking the extended period of limitation, demanding service tax amounting to Rs.68,75,411/- including Cess with proposal to appropriate Rs.15,47,983/- already deposited, alongwith interest and further penalty was proposed under Section 76, 77 & 78 of the Act.

4. The appellant contested the SCN on the ground that they have not claimed any benefit of abatement (67% under Notification No. 15/2004-ST, as amended). In fact, they have availed benefit of exemption under Notification No. 12/2003-ST (which provides deduction for material component on actual basis), by segregating the value of material and value of services and accordingly they have paid VAT on the material portion and service Tax on the labour/service portion. Further appellant denied the allegation that they have availed any Cenvat Credit on the inputs during the period 2008 – 09.

5. The SCN was adjudicated on contest vide impugned O-I-O dated 23rd November, 2011 by the ld. Commissioner, who was pleased to confirm a reduced amount of Rs.53,27,428/- alongwith equal amount of penalty under Section 78. Further penalty was imposed under Section 76. Being aggrieved, the appellant is in appeal before this Tribunal.

6. Heard the parties and perused the case records.

7. On perusal of the show cause notice, the admitted fact is that the contracts executed by the appellant, the copies of which were scrutinised by the Department, are composite, or to be performed alongwith supply of material. No separate cost of material to be supplied was shown. The invoices raised, also contained classification of the material as "sales-tax free", "sales against D-Form" etc. Further in para 9 of the SCN, it is recorded that on scrutiny of the balance- sheet and profit and loss Account of the

appellant for the period under dispute, it is revealed that Shri Raman Raina is the Proprietor of Cosmos Collection, is also Proprietor of M/s. Dream home during the Financial year 2005-06. During the period, appellant have shown income under various heads including sales against - C-Form, tax free sales, job work, Miscellaneous Income. From the perusal of few contracts and invoices submitted by the appellant, it was noticed by Revenue that they were executing Composite Contracts, the invoices have been issued by vivisecting the value of the contract as – sale, sale against C Form, tax free sale, sales - service tax, etc. Further in para 11 of the SCN it is recorded that perusal of the copies of agreements proves that appellant was working under a Composite Agreement for supply of both goods and services. It is further alleged in the SCN in para 13 that, as the appellant have not given complete details of bills raised against service provided and payments received towards various bills issued by them, the Department have no option but to calculate service tax payable on the basis of the data available in the balance-sheets from 2004-05 to 2008-09.

8. We find that the appellant have maintained proper records of their transactions and have filed regular return with the Department. The appellant have also got their accounts audited by Chartered Accountant, annually. They have also filed regular returns with the Sales-tax Department for the sale of materials (both sales of material only and also for material used in execution of work contract). Hon'ble Supreme Court have held in the case of

Larsen & Toubro vs. Union of India - 2015 (39) STR 913 (SC) that prior to 1st June, 2007, in any contract which is composite in nature, wherein both supply of material and labour is involved, such contract cannot be chargeable to service tax prior to 1st June, 2007, when work contract was introduced, as a taxable head providing for segregation of the material and labour component, so as to tax the labour component under Service Tax. Accordingly, we hold that for the period 1st October, 2004 to 30th May, 2007, no service tax can be demanded from the appellant. So far the period 1st June, 2007 to 31st March, 2009 is concerned, we find that under the fact and circumstances, there is no case made out of any fraud , suppression, or falsification of account or the returns on the part of the appellant. The show cause notice is *primafacie*, based on change of opinion on the part of the Revenue. For such change of opinion, extended period of limitation is not available.

9. Accordingly, we hold that the show cause notice is bad and not tenable. Accordingly, we allow the appeal and set aside the impugned order. The appellant shall be entitled to consequential benefit in accordance with law.

[Order pronounced in the open Court on 13.11.2019]

(C.L. MAHAR)
MEMBER (JUDICIAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Anita